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Paper No. 5

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APR 04 2002

OFFICE OF PETITIONS

In re Application of :
Ziaka-Vasileiadou et al. :
Application No. 09/973,459 : DECISION DISMISSING
Filed: 10 October, 2001 : PETITION
For: Integrated Processes for :
Olefin and Polyolefin Production :

This is a decision on the petition filed by facsimile on 30 January, 2002, which is treated as a petition requesting that the above-identified application accorded a filing date of 2 October, 2001, rather than the presently accorded filing date of 10 October, 2001.

The petition is **dismissed**.

Petitioners assert that the application was deposited in United States Postal Service (USPS) Certified Mail (first-class) on 24 September, 2001. In support, petitioners have supplied a copy of a USPS Certified Mail Receipt postmarked 24 September, 2001, as well as a sales receipt from the USPS showing that postage was paid for a mailing to Washington, DC 20231 on 24 September, 2001. Petitioners request that the application be accorded a filing date of 2 October, 2001, on the basis that (a) a filing date of 2 October, 2001, is required for petitioners to claim priority to provisional Application No. 60237,202, filed on 3 October, 2000, and (b) petitioners "were told by the Postal Service clerk that our envelope will be delivered in the PTO destination within about 7 business days" from the date of mailing.

The arguments have been considered, but are not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that no application papers were received on 2 October, 2001. An applicant alleging

that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes that the application was (or should have been) received in the Office on 2 October, 2001, is not more persuasive than the date the papers are shown to have been received in the official file.

At best, the record shows that applicants intended to file the papers in question in the USPTO by first-class mail on or before 2 October, 2001, but the evidence, unfortunately, does not show that the USPTO received the application on 2 October, 2001. Petitioners should also note that while there is no provision in the rules of patent practice permitting the Office to accord a filing date to application papers based on the date the papers were deposited in USPS Certified Mail service, the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of MPEP 503.¹ This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, due to the absence in the record of a postcard receipt itemized with respect to the patent-related papers that bears a USPTO date stamp of 2 October, 2001, showing that the original application papers were received at the USPTO on the date alleged in the petition, the date of receipt must reasonably remain 10 October, 2001, the date that the record adequately shows that these papers were first received at the USPTO.

In summary, as 37 CFR 1.6 states that correspondence received in the USPTO is stamped with the date of receipt, applicants assumed the risk, in mailing the application by first-class mail, that if a delay occurred in the delivery of mail by the U.S. Postal Service, the application could not be accorded the desired filing date.

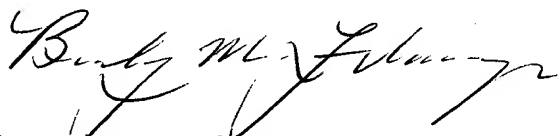
¹ The public was afforded a "reminder" of the then extent post card receipt practice at 857 Off. Gaz. Pat. Off. 667 (O.G.) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the O.G. that contains important O.G. notices of continuing relevance.

Had petitioners mailed the application papers by USPS Express Mail Post Office To Addressee service of the USPS, petitioners could have sought relief from their predicament under the provisions of 37 CFR 1.10(e), by promptly providing a copy of the patent-related documents, having affixed thereon the Express Mail label number, as well as a copy of the Express Mail mailing label showing a USPS "date-in" receipt date, and would have obtained as a filing date for any non-received correspondence the "date-in" given by the USPS on the Express Mail mailing label.

Additionally, with regard to the fee deficiency of \$15.00 and surcharge of \$65.00, the basic filing fee for a small entity was \$370.00 for applications filed on or after 1 October, 2001. As petitioners' application was received after 1 October, 2001, the \$355.00 basic filing fee submitted with the application papers was insufficient. Receipt of the fee deficiency and surcharge of \$80.00 on 25 January, 2002, is hereby acknowledged.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 10 October, 2001, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703)308-6918.



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